Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

THOMAS A. MOORE, M.D.
Plaintiff-Petitioner

versus

BRENDA KELGER, ET AL
Defendant-Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

Whether the U. S. Court of Appeal for the Fifth Circuit erred in holding that evidence of perjury was immediately apparent when the Defendants found file folders and disks in Plaintiff-Petitioner's desk.

II

Whether the U. S. Court of Appeals for the Fifth Circuit erred in accepting Defendants' assertion that the Petitioner told District Court that he kept no records, despite ample evidence in the District Court records to the contrary.

III

Whether the U. S. Court of Appeal failure to distinguish Administrative Records from Medical Records led to confusion by the Appeals Court about the Facts.

IV

Whether the blanket acceptance of the Declarations of the Defendants', and the disregarding of the Plaintiff-Petitioner's Declaration by the U. S. Court of Appeals for the 5th District created an untenable double standard.

V

Whether the U. S. Court of Appeals for the Fifth District *CONFUSED* the legal access granted by a *Search Warrant*

QUESTIONS PRESENTED (continued)

with the legal access granted by a *General Writ of Assistance* in holding that the Defendant's *Writ of Entry* entitled them to unrestricted access to items in the Plaintiff-Petitioner's residence that were not mentioned with *particularity* in the Affidavit of Agent Brenda Felger and the Government's *Exparte Motion* for the *Writ of Entry.*

VI

Whether the U. S. Court of Appeals erred in concluding that it could resolve all relevant factual disputes despite overwhelming evidence to the contrary contained in the Plaintiff-Petitioner's *Complaint* and the attached *Memorandum* which attest in detail to the contrary.

VII

Whether the U. S. Court of Appeals for the Fifth Circuit showed bias toward the Plaintiff-Petitioner by the mis-statement of why the instant case was before their court in the first sentence of their opinion, thereby tainting all observations to follow.

VIII

Whether, in consideration of the preceding Question, the U. S. Court of Appeals for the Fifth Circuit erred in their order **REVERSING** the order of the District Court, **DENYING** the Defendant's Second Motion for Summary Judgment.

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OCTOBER TERM, 1994

THOMAS A. MOORE, M.D.
PLAINTIFF-PETITIONER,

versus

BRENDA FELGER, ET AL.,
DEFENDANTS-RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Thomas A. Moore, M. D. petitions for a writ of certiorari to review the judgement of the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT reversing the Rulings of Hon. Frederick Heebe, Judge, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, denying the *Motions for Summary Judgement* of the Defendants-Respondents as noted in the MINUTE ENTRIES of June 2, 1992, and March 26, 1993.

OPINIONS BELOW

The **Minute Entry** of Hon. Frederick Heebe, Judge of June 2, 1992, (App. C, A. 41-49) C.A. No. 92-0367 (U. S. D. C. EASTERN DIST. OF LA). The **Minute Entry** of Hon.

Frederick Heebe, Judge of August 5, 1992 (App. F, A. 64-68) C.A. No. 92-0367 (U. S. D. C. EASTERN DIST. OF LA). The **Minute Entry** of Hon. Frederick Heebe, Judge of March 26, 1993, (App. G, A. 69-80) C. A. No. 92-0367 (U. S. D. C. EASTERN DIST. OF LA). The Ruling of UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT of April 29, 1994(App. J)

JURISDICTION

The judgment of the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT was entered on Apr. 29, 1994. Jurisdiction is conferred on this Court by 28 U. S. C. § 1331.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

ARTICLE IV

"The right of the people to be secured in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

1. *Proceedings Below.*

On Jan. 29, 1992, Plaintiff-Petitioner, Thomas A. Moore, M.D. filed a *COMPLAINT FOR DAMAGES WITH REQUEST FOR JURY TRIAL* against Brenda Felger, et al, Defendants-Respondents, (C.A. NO. 92-0367) (App. A, A-1-5 and App. B, A-6-40).

On Feb. 18, 1992, **DEFENDANTS' MOTION FOR EXTENSION OF TIME TO SERVE A RESPONSIVE PLEADING** was filed, and an **ORDER GRANTING EXTENSION OF TIME** was given; stating, "-the defendants shall have up to and including April 3, 1992, to serve a responsive pleading to the plaintiff's complaint.

On April 2, 1992, **DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGEMENT AND FOR RULE 11 SANCTIONS** was filed, absent "a responsive pleading to the plaintiff's complaint."

On Apr. 20, 1992, **RESPONSE OF PLAINTIFF, THOMAS A. MOORE, M.D. TO DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGMENT AND FOR RULE 11 SANCTIONS** was filed. Coincidentally, on Apr. 20, 1992, Defendants counsel, Jose F. De Leon, filed an **APPELLEES' MOTION FOR EXTENSION OF TIME TO SERVE BRIEF** in the U. S. D. C. EASTERN DIST. OF LA citing Case Nos. 90-12071-B Chapter 11, and C. A. No. 92- 0569. Essentially, the argument made was that if the Defendants eventually prevailed in **DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGEMENT AND FOR RULE 11 SANCTIONS** filed Apr. 2, 1992, they could save the time and trouble of preparing "a responsive pleading to the plaintiff's complaint", which was their obligation to have filed by Apr. 3, 1992 as stated in the above noted **ORDER GRANTING**

EXTENSION OF TIME.

The Ruling of Hon. Frederick Heebe, Judge of June 2, 1992, (App. C, A-41-49) C. A. No. 92-0367 (U. S. D. C. EASTERN DIST. OF LA), failed to dismiss the Defendants on any issue other then "whether the defendants legally entered plaintiff's premises".

On June 15, 1992, **MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAINTIFFS'S HOME** (APP. D, A-50-60) was filed.

On June 17, 1992, Defendants filed **Answer.** In this **ANSWER** the Defendants' FIRST DEFENSE was, "This action is barred by prescription."; SECOND DEFENSE was, " This action is barred by qualified immunity of the defendants."; and the THIRD DEFENSE was, "The court lacks jurisdiction over the defendants due to lack of service of process." The FIRST and SECOND had been ruled on by Judge Heebe in his Minute Entry fifteen days earlier, see the **Minute Entry** of Hon. Frederick Heebe, Judge of June 2, 1992, (App. C, A-41-49). The third was totally unsupported by any evidence to the contrary. See the **Minute Entry** of Hon. Frederick Heebe, Judge of Aug. 5, 1992. To this date the Defendants have yet to file an Answer with any detailed evidence to charges in the **COMPLAINT** of Jan. 29, 1992. (App. A, A-1-5)(App. B, A-6-40)

On July 14, 1992, **DEFENDANTS' OPPOSITION TO THE PLAINTIFF'S MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO THE PLAINTIFF'S HOME** was filed.

On July 22, 1992, after *Oral Argument,* (App. E. A-61-63), on the **MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAIN-**

TIFF'S HOME (APP. D, A-50-60), Judge Heebe ruled in the Defendants' favor and maintained his ruling of noted June 2, 1992 on that issue.

Plaintiff appealed the Ruling on **THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAINTIFF'S HOME,** however, Plaintiff was apprised that he could not appeal the Ruling until Final Judgment had been rendered. Plaintiff has subsequently appealed that Ruling, (U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, No. 94-30383). See below.

On Nov. 23, 1992 Judge Heebe filed **Notice of PRELIMINARY CONFERENCE IN C. A. NO. 92-0367** before Magaistrate Moore on December 8, 1992. PRE-TRIAL PROCEDURE and STATEMENT OF POLICY REGARDING DISCOVERY MOTIONS WERE ENCLOSED. Following the pre-trial conference, discovery was imminent.

In early 1993, Defendants' filed a **SECOND MOTION FOR SUMMARY JUDGMENT.** Attached to the Motion and Labeled as "government Exhibit C", were copies of Affidavits of seventeen Internal Revenue employees and one Assst. U. S. Attorney. These Affidavits (App. H, A-81-132 and A-134-142) purported to cover the activities of the Affiants on the dates given in the **COMPLAINT FOR DAMAGES AND REQUEST FOR JURY TRIAL.**(App. A, A-1-5 and App. B, A-6-40)

On Feb. 5, 1993 a **MOTION TO ENROLL** as counsel of record was filed by Arthur A. Lemann III, (#8296), and Martha L. Adams (#20666). An accompanying **MOTION FOR CONTINUANCE** was filed that same date. The

ORDERS GRANTING BOTH Motions were signed by Judge Heebe on Feb. 9, 1993.

On March 9, 1993 Plaintiff's counsel filed **OPPOSITION TO DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT.**

On March 17, 1993 the Hearing was held before Judge Heebe.

On March 26, 1993, Judge Heebe denied the Defendants' Second Motion for Summary Judgment. (App. G, A-69-80).

Facts and documentation of applicable Law were placed in his **MINUTE ENTRY,** (App. G, A-69-80).

Defendants-Respondents shortly th reafter filed an Appeal from the Order of the U. S. D. C. of the Eastern District of Louisiana in the U. S. Court of Appeals for the Fifth Circuit, (5th Circ. No. 93-3271)

On or about July 12, 1993 **BRIEF FOR THE APPELLANTS** was filed, (5th Circ. No. 93-3271).

On Aug. 10, 1993 **APPELLEE'S MOTION TO DISMISS FOR LACK OF APPELLATE JURISDICTION** was filed, (5th Circ. No. 93-3271).

On Sept. 22, 1993 the Court ordered the motion carried with the case on appeal. (5th Circ. No. 93-3271)

On Oct. 19, 1993 **ORIGINAL BRIEF ON BEHALF OF APPELLEE, THOMAS A. MOORE, M.D.** was filed, (5th Circ. No. 93-3271).

On or about Nov. 8, 1993 **REPLY BRIEF FOR THE**

APPELLANTS was filed, (5th Circ. No. 93-3271).

On March 3, 1994 Oral Argument was heard by a three Judge Panel of the U. S. Court of Appeals, Fifth Circuit, March 3, 1994.

On Apr. 29, 1994, the Fifth Circuit **REVERSED** the ORDER of the District Court denying summary judgment, and judgment was **RENDERED** in favor of the defendants. (App. J, A-144-156)

On May 25, 1994, Final Judgement was given by U. S. D. C. Judge Heebe in accordance with the Fifth Circuit Court's Apr. 29, 1994 Ruling.

The Plaintiff-Petitioner has Appealed the Final Judgment of May 25, 1994 to contest the Distr. Court's earlier Ruling on the legality of Defendants' Entry into the Plaintiff's home, June 2, 1992 (App. C, A-42). (U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT, No. 94-30383).

2. Statement of the Facts:

This action by the Plaintiff-Petitioner arises out of the injury and damages which he alleged in his **COMPLAINT FOR DAMAGES AND REQUEST FOR JURY TRIAL.**, (App. A, A-1-5), and then supported in his attached, **MEMORANDUM TO SUBSTANTIATE INJURY AND DAMAGES.** (APP. B, A-6-40).

Plaintiff-Petitioner has been and remains in the active practice of Psychiatry since July, 1963. His practice was in New Orleans and Houma, LA until 1976 at which time he phased out the practice in New Orleans, and since he has practiced solely in Houma. From 1963 until the fall of 1985, except for a few months in 1972 or 1973 when he was on the Medical Staff at Coliseum House and DePaul hospitals in New Orleans, his practice was limited to Long-term intensive Psychoanalytically-Oriented Therapy which

was conducted in his Office.

This type therapy involves regular visits, from once per week to as many as five per week depending on the case and other circumstances. The case load of any practitioner of this type therapy is necessarily limited by the great amount of time devoted to each individual patient, and turnover of patients is also limited as the treatment may last from many months to a number of years.

As a result of the small number of active cases at any particular time, it is the practice of many such therapists to simply go through their appointment book at the end of each month, count the visits, multiply the number by the applicable fee, and hand deliver the statement to the patient on the last visit of the month. While in residency training, and continuing into his early years in practice, the Plaintiff-Petitioner underwent over four years of didactic analysis by a Training Analyst associated with the New Orleeans Psychoanalytic Institute. The method of billing noted above was used by the Plaintiff-Petitioner's treating Analyst, as well as by a Supervising Analyst seen for case supervision. Plaintiff-Petitioner adopted the same very simple method in his emerging practice.

Following the move to consolidate his practice in Houma in 1976, Plaintiff-Petitioner lived in a rental house twelve miles south of Houma for four years. He was unmarried at that time. In October, 1980, Plaintiff-Petitioner married Dorothy Lynn Heaslip. It was a second marriage for both. Not wishing to jeopardize his new wife with his accumulating financial obligations, the couple entered into a marital contract several days after their marriage. Dorothy Lynn H. Brennecke had acquired a piece of property in the late 1970's. In the fall of 1980, she sold that property and invested the funds to secure a Lease-Purchase Agreement on a house and property in the same subdivision as the property she sold. Late in the year of 1980, the newly married

couple moved into the house *she* so secured.

It is a matter of record that Plaintiff-Petitioner, and Dorothy Lynn Heaslip Brennecke had lived together from early 1974. Because of their backgrounds, and to preserve the feelings and sensibilities of their minor children from their respective earlier marriages, as well as other family members, and acquaintances, the couple presented an outer facade of being married during those years. Early in the year of 1980, acting under the impression that the couple was legally married, Dorothy Lynn Heaslip Brennecke was presented with an I. R. S. Assessment of one-half the tax liabilities of the Plaintiff-Petitioner which had just been assessed by Agent Gerald Fortier after examination of the years, 1977-'78-'79. We had the incongruous situation of I. R. S. assessments being sent to Lynn H. Brennecke, (Brennecke was her first husband's name), while she was being assessed for one-half the Plaintiff-Petitioner's assessment as if a community obligation existed.

Having been assessed these obligations, her bank accounts were seized. She obtained a letter of credit from the Progressive Bank & Trust by depositing a number of her personal jewelry items with appraisals with the Bank. The letter of credit was later returned by the I. R. S. after it was established in Tax Court that she was not married to the Plaintiff-Petitioner during the years in question. With the return of the letter of credit her jewelry items were returned to her. Many of the same items of jewelry were later mentioned in Agent Felger's Affidavit attached to the Government' Exparte Motion to Secure the Writ of Entry used by the I. R. S. on Mar. 29 & 30, 1990. (It must be noted, that items acquired or given to a third party by a taxpayer in years when no tax liability exists do not fall subject to a lien for tax liabilities the donor in subsequent years.).

During the early 1980s, the Plaintiff-Petitioner's financial problems compounded. Faced with heavy judicially mandated child-support for his children and alimony payments to his ex-wife, he fell further and further behind. His ability to expand his earnings was non-existent, and the time and funds expended simply keeping the "Wolves from the door" allowed for a "no gain" situation.

In 1985, the I. R. S. stepped up it's efforts to collect the Liabilities assessed for 1977-'78-'79. By this time, the amount owed for those years had mushroomed to several times the amount of the assessed taxes by the addition of penalties and interest. Harassment by Agents of both the Plaintiff-Petitioner and his wife was unremitting. Agent Cyrus Fanguy called Mrs. Moore in and began what he stated was an independent audit of her separately filed returns. On one occasion, with her tax counsel, Paul Cordes present, he took hours to hand copy several years of her cancelled checks. Agent Fanguy clearly went beyond the Fourth Amendment mandates of probable cause when he "-issued over 1,200 summonses to individuals, corporations and banks in an effort to locate information-" and "Nothing of any consequence was obtained from the summonses." (App. H, A-97) -Declaration of Cyrus J. Fanguy-numerical 6.) Further, in his Deposition of April 10, 1992 in C. A. 90-1918 -U. S. D. C. East. Distr. of LA (Exhibit #18 of App. B), Agent C. Fanguy was quick to dilute the responsibility for his actions. "These summonses were issued under the instruction of our district counsel-". This was not a unilateral thing that I just did. There were other people involved in the issuance of the summonses." -I'll do what I'm told." (For Complete Q & A see Deposistion Page 27, line 13 through Page 29 line 8, or, Footnote 5, of **MOTION TO RECONSIDER THE LEGALITY OF DEFENDANTS' ENTRY INTO PLAINTIFF'S HOME** (APP. D, A-58-60). On another occasion , with Agent C. Fanguy present, his Supervisor, Bobby Windgard told Mrs. Moore in

the presence of her attorney, Paul Cordes, 'We are going to get Dr. Moore, and if it takes running over you that's too bad." Quote paraphrased.

It was not long afterward when on the morning of May 17, 1985, Mr. Windgard's statement came to fruition. Agent John Byrd, acting on spotty information, exercised the questionable tactic of a "Jeopardy Seizure". Though Plaintiff-Petitioner admits that at the time of this action, there were a few items held by his wife which could be construed as Transferee items, most notably an automobile, this could have been adressed by the normal Summons abilities of the I. R. S. The justification for the use of a measure instituted to deal with drug lords, or organized crime figures seemed to have at most, some Constitutional ramifications for the Service, and at least was an exercise in overkill. Plaintiff-Petitioner was told by one of the Agents present, "We can put boats in the bayous and planes in the air! Yu can't get away!" Alas, all the Plaintiff-Petitioner and his wife wanted to do is stay in *her* house which was their home. Agents paraded through the home during the day of May 17, 1985, they took pictures of the contents, and checked their copies of the I. R. S. Procedural handbook (Brenda Felger, who was not an Agent at the time, but a secretary, was brought through the house to witness the power wielded by the Service and it's Agents. How could she help but want to be one!?!) The Agents did not take any of the household contents. A locksmith was called, the house was secured, numerous stickers warning of the I. R. S. seizure were posted on portals of entrance and exit, and the agents departed. (The automobile in question had been seized earlier in the day from Plaintiff-Petitioner's parking spot at his office, and Mrs. Moore had been followed to a used bookstore where Agents took the van she was driving while her friends and acquaintances looked on.)

Over the next two weeks, Plaintiff-Petitioner was only able to go into the house when in the company of two

I. R. S. Agents. This was permitted so he could retrieve items to liquidate to give cash to the I. R. S. Mrs. Moore's main concern, and that of the Plaintiff-Petitioner, in her behalf, was to restore her to her home. Family members were contacted. Mrs. Moore's parents, and one of her two brothers, made loans to Mrs. Moore, who in turn, loaned the funds to the Plaintiff-Petitioner, who delivered the funds to the I. R. S. One of the Plaintiff-Petitioner's brothers, Father Edmund Moore, made a loan to the Plaintiff-Petitoner for the same purpose. As the assessment was slightly in excess of $185,000.00, available sources were running thin. Approximately $135,000.00 had been raised when Mrs. Moore offered to sell her jewelry, and lend the proceeds to the Plaintiff-Petitioner to attempt to pay the assessment so she could return to her home. Her jewelry items, the same given to secure the Letter of Credit in 1980, were retrieved from the home with Agent Byrd and another Agent and delivered to the Service to be used as collateral, by which Mrs. Moore could advance additional loans to the Plaintiff-Petitioner. Mr. Byrd, recognizing that, "one in the hand is worth two in the bush", was interested in something more liquid than the jewelry items which would take time to find a prospective buyer, or, if sold at forced sale, would be sacrificed. He turned his attention to Mrs. Moore's equity in the Lease-Purchase Agreement on her house. By placing pressure on the owner of the house and Mrs. Moore, he created a scenario which ended in Mrs. Moore surrendering her position in the Lease-Purchase Agreement. (Brenda Felger went to the signing of the agreement by which Mrs. Moore surrendered her interest in the Lease-Purchase Agreement, and actually signed as a Witness.) Mrs. Moore realized approximately $65,000.00 from the Property's owner, and loaned the proceeds to Plaintiff-Petitioner, $50,000.00 of which was immediately paid to the IRS. This made the assessment **PAID IN FULL** and the automobiles, and the Jewelry items were released.

Plaintiff-Petitioner and Mrs. Moore were allowed to return to the house on May 31, 1985, after the assessment had been paid.

It became immediately clear that the owner of the house wanted to sell the property. A verbal agreement was stuck between Mrs. Moore and the owner that he would sell to her, if she could pay him an amount equal to his equity, until she made arrangements to finance the balance. Each year in early June, the Plaintiff-Petitoner's brother, Rev. Father Edmund J. Moore, (now Rt. Rev. Monsignor), visits when on vacation. This yearly visit which was the case for many years prior to 1985, and has been the case each and every year since, occurred soon after the above noted seizure. Indeed, as noted above, his brother had made the Plaintiff-Petitioner a loan of $15,000.00 which had been part of the funds to satisfy the Assessment. Inevitably, discussion of the "Catch 22" in which the Plaintiff-Petitoner found himself followed. Father Moore offered to advance to the Plaintiff-Petitioner a loan of the remainder of his life savings which approximated the $50,000.00 needed. He drove back to his Parish in Monroe, Louisiana, made the necessary arrangements and returned with the funds. Plaintiff-Petitoner repaid to Mrs. Moore $50,000.00 of the funds loaned to him to pay taxes. Mrs. Moore added the $50,000.00 repaid to the $15,000.00 she still had from her release of the Lease-Purchase Agreement and began her efforts to secure financing. She finalized her financing efforts, and purchased the property at 207 Oak Alley Drive in the summer of 1986, when she was able to qualify for the loan by lowering the amount financed by the amount of $25,000.00 which she realized through the sale of an emerald ring which she had since the early 1970's. (This item of jewelry had been listed on the collateral list for the letter of credit in 1980, and again had been listed in the items offered in loan to the Plaintiff-Petitoner in 1985 to raise funds for Plaintiff-Petitioner's taxes. It was listed in items returned to Mrs. Moore May 31, 1985. This item is

mentioned in Agent Felger's Affidavit as being held for the Plaintiff-Petitioner, by Mrs. Moore, as nominee. It also appears to be the item referred to by Agent McKinell in his **DECLARATION**, (App. H- Paragraph 8. A-103), as he makes scurrilous accusations that Mrs. Moore has somehow foiled his efforts by surreptitiously purloining it from under his nose.) All of the other items of jewelry, as well as every piece of furnishings particularized by Agent Felger in her **Affidavit** in support of the **Exparte Motion** were subsequently returned to Mrs. Moore. (App. N, A-210c. The property purchased by Mrs. Moore in 1986 - using Funds from the sale of property she acquired in the late '70's and the proceeds from the sale of her ring acquired in the early 70's was seized March 29, 1990 after being listed as a Nominee item by Agent Felger. Mrs. Moore filed a Wrongful Levy Suit (C.A. No 90-1989) soon after the seizure. However, Francisco Jose DeLeon, Counsel for the government, took Days of Deposition from her and many others. As her bank accounts and retirement funds were also seized as "Nominee" of the Petitioner, she found herself unable to support counsel. (See A-22-4th Paragraph App. B) Her counsel asked for, and was granted, permission to withdraw from her case in the summer of 1991. Attempts to secure new counsel, without funds, proved fruitless. She was forced to enter into a settlement in the fall of 1991. (App. N, A-209-217). (Mrs. Moore was once again unfairly forced to surrender her home because she stood between the Plaintiff-Petitioner and the Agents involved.) (App. N, A-210a.)

Having paid Mrs. Moore the $50,000.00 borrowed from his brother in June, 1985, Plaintiff-Petitioner's position was not improved. He still owed that $50,000.00, though now to his brother rather than to his wife. He still owed his wife $32,000.00 she had borrowed from her ageing parents. Plaintiff-Petitioner was under extreme pressure to meet these obligations, as quickly as possible.There were also legal fees in 1980 and again in 1985. Some relief came quickly from an unexpected quarter. Plaintiff-Petitioner received three Tax Refund checks, one for each year of the

assessments of 1977, '78, & '79, totalling over $10,000.00. These funds were immediately repaid to Mrs. Moore so she could begin to reduce the loans to her family members .As noted earlier, there were a few items seized which were legitimately under scrutiny by the I. R. S. The most notable was a 1981 Mercedes 380 SEL, which though purchased (used) for Mrs. Moore, she rarely drove it, preferring to drive a 1982 GMC van. This automobile was registered in Mrs. Moore's name as it was purchased for her. The Automobile was sold to G. M. A. C., in late 1985, refinanced, and the proceeds were used to reduce the amount of her loan from her brother, (the proceeds of that loan from her brother having been loaned in turn to the Plaintiff-Petitioner to pay taxes.) This point may seem labored, but it's importance will be shown below.

In the summer of 1985, working with Tax Attorneys from the firm of Lemie, Kelleher, et al, of New Orleans, and with Agent Cyrus Fanguy, Plaintiff-Petitioner prepared and submitted information on his income and deductions for the years 1980 through 1984. This information was given so the returns could be submitted so the proper tax could be assessed for the years in question. The returns were prepared, the Tax was calculated, and an assessment was made in accordance with I. R. S. policy. In early 1986, Agent Wendy McSpadden, came unaccompanied by any other Agent to Plaintiff-Petitioner's home to request payment in the approximate amount of $595,000.00 The dim prospect of collection of any significant funds at that time was discussed amicably. Plaintiff-Petitoner cited the events of the previous year. Subsequently, liens were filed and published locally. Plaintiff-Petitioner filed his 1985 return in a timely fashion.

In April of 1987, Plaintiff-Petitioner had his first meeting with Agent Eugene E. Nepveaux. He met with Agent Nepveaux in his office at 501 Barrow Street, immediately across from Haydel Medical Clinic, the address of which is 502 Barrow Street. (The Haydel Medical Clinic's 502 Barrow Street address has been used by the

Plaintiff-Petitioner continuously since 1964 for reasons too numerous to list, but none of which are clandestine. (As suggested in Agent Felger's **Affidavit** to support the **EX-PARTE MOTION** to obtain the **WRIT OF ENTRY.**) In that initial interview, Plaintiff-Petitioner was pleased to show Agent Nepveaux his attempts to at least stay current by showing him the actual cashier's check he was about to put in the mail with his 1986 return, along with a cashier's check for the 1st quarterly estimate for 1987. Any idea that this might be seen in a favorable light faded soon afterward. Agent Nepveaux made it clear that he was in a collection mode and in no mood to discuss niceties. When Plaintiff-Petitioner related the realities of his limited means. Agent Nepveaux made it clear that he considered any and all property owned by Mrs. Moore to be back in play. His direct statement early on was, "She should sell everything she's got, give us the money, and then we'll see what else we can get." With his intent thus stated, meetings were soon arranged to discuss the propriety of his conclusions, and he met with Mr. Charley Schrader, who at that point represented Mrs. Moore, (His representation of the Plaintiff-Petitioner did not commence until he represented the Plaintiff-Petitioner in a meeting with Magistrate Alma Chasez relative to the enforcement of Agent Nepveaux's Mar. 6, 1989 Summons sometime in the summer of 1989.), and her C. P. A. Barry Melancon. (Mr. Melancon did also serve as Plaintiff-Petitoner's accountant at that time.) Mrs. Moore's counsel and her accountant objected strongly to Agent Nepveaux's conclusions about Mrs. Moore's assets. Coincident with the discussion of Mrs. Moore's position as presented by her counsel, Mr. Melancon was attempting to set the stage for an Offer in Compromise as a realistic approach to settlement of Plaintiff-Petitioner's ongoing problems with the Service. Agent Nepveaux stated he felt a realistic offer that he could support would be $ 328,000.00. In following discussions, (Mrs. Moore's representatives could only conclude that again, Agent Nepveaux was considering everything Mrs. Moore owned, things she had given up to repay the

loans to her family members, and possibly seeing her as being able to borrow again even though the obligation was never hers. In order to try to introduce some reason into the mix, Mrs. Moore's representatives arranged to take Agent Nepveaux through the house in the summer of 1987. Plaintiff-Petitoner accompanied Mrs. Moore's representatives, Charley Schrader and Barry Melancon through the house showing him every room, including Mrs. Moore's study and the room Plaintiff-Petitioner used as an office. He made comment to the Plaintiff-Petitioner while in the latter room, "I guess this is where the bills are made." Plaintiff-Petitioner recalls nodding in the affirmative.

On August 17, 1987, Mr. Melancon wrote to Agent Nepveaux, stating that an Offer in Compromise has been submitted (for $60,000.00 as we had discussed) in a timely fashion. He referred to Mr. Nepveaux's comment to the Plaintiff-Petitioner in the meeting in question when he stated he could not recommend acceptance of an offer in that amount, i.e., "You make more money than I do, and I manage to live well. You can pay more." Mr. Melancon requested a listing of the items which compromised a lien value of $328.000.00. Also requested, "That Dr. Moore and/or Lynn Moore be provided with a listing of those items allegedly transferred that are being considered in the proposed transferee assessment along with relative values." (App. B, A-30 Exhibit List- Exhibit #7, A-30) Agent Nepveaux *never* responded to any of the requests in that letter.

The Offer in Compromise mentioned above was returned as unacceptable in early 1988 as not being in the best interest of the Government, with the added request to pay it in full as soon as possible. With additional interest it was approximately $650,000.00. Collection efforts made it impossible to conduct any business in a normal fashion. Agent Nepveaux was as likely to turn up in Plaintiff-Petitioner's garage in the A. M., as at the Hospital Administrator's office, or elsewhere. Things went from bad to worse over the next couple years leading to the March 6,

1989 summons. Plaintiff-Petitioner submits, and admits, that he did everything he could within the law to resist the production of the materials sought by the Summons of March 6, 1989. It must be noted that the kind of confidentiality needed to accomplish the kind of therapy he did exclusively through late 1985, is tantamount to the Seal of Confession. It was with great reluctance and heavy soul that the Plaintiff-Petitioner gave his records to the Court the day before the Feb. 21, 1990 Contempt Hearing. The records were being kept in exactly the same manner as Plaintiff-Petitioner had kept his accounting records since 1963. As pointed out in Judge Collins' court, once the balances owing were transferred to the Statement, it also contained a Diagnosis. (App. B, A-30 Exhibit #3) Plaintiff' Petitoner respectfully submits that the record shows that he fully complied with the Mar. 6, 1989 Summons before his appearance in the Mar. 7, 1990 hearing. **Appellants Brief to Show His Compliance with Civil Summons and in Opposistion to the Rule of Contempt** (App. K, A-157-199) Plaintiff-Petitoner avers that all the statements made in his **DECLARATION** (App. H, A-133-136) of March 9, 1993, attached to the **OPPOSITION TO DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT**, are true.

Following the March 7, 1990 Hearing, (App. B, A-30 Exhibit #3) Plaintiff-Petitioner appeared with his counsel Charley Schrader, in response to a second Summons issued March 5, 1990, for information exactly as requested in the Summons of March 6, 1989, but for a different time period. That meeting was with Agent Brenda Felger and Agent Steve Fanguy on Mar. 19, 1990. Agent Felger took copious notes during the meeting. (App. K, See A-194, last sentence continuing to first paragraph A-195).

In the Apr. 29, 1994 (5th Circ. Opinion) under **II, The Search, B. The plain view Doctrine, 2. Immediate Apparent Evidence of Perjury, first paragraph,** *"The district court asked, "Dr. Moore, you don't have any administrative records, is that correct?" Moore replied,* **"No, sir, but that**

is about to be corrected."*Based on Moore's statements, it was reasonable (and accurate) for the I. R. S. agents to believe that Moore testified that he kept no patient records.*"(A-153). There are problems with this conclusion. One: There is a difference between administrative and/or accounting records; and patient histories, evaluations, hospital records, etc., which are necessary for ongoing patient care. The discovered records were perused, and seized, allegedly returned to their original place in the desk (which, by way, is a standard 60" by 30" office desk which did not require disassembly to be removed from the residence), and then re-seized under a Warrant issued nine hours after the Agents entered the office. (Agent Oubre had threatened Mr. C. Schrader with arrest for interference with the Agents in the office in mid-morning.) Though these records contained face sheets which had been recently prepared and added as reported to Agents B. Felger and Steve Fanguy to satisfy the auditing needs of the Service. (App. K, A-195-195). The overwhelming volume of the records seized was clinical material of the most private and personal nature, e.g. Hospital Discharge Summeries, Lab. tests, Psychologicaltes & results, etc.

Two: Agent Steve Fanguy was able to recall testimony from the Court, when he wasn't there, but did not recall the details of the Summons meeting of March 19, 1990 which he attended, and which directly conflicts with his **DECLARATION** (App. H, A-130 8.)

In the **REPLY BRIEF FOR THE APPELLANTS**, (App.I, A-143) the Defendants' counsel states, "*Indeed as a factual matter, the record in the instant case clearly contains sufficient factual material in the form of affidavits from all of the individual defendants setting forth just what each one was doing at the time relevant to the suit. There is little more that could be brought out in a full-scale trial with respect to each defendant's conduct.*" A quick review of the original Affidavits (App. H, A-81-132, A-137-142), will show that all but one was produced on the same machine and in the same format. The last is very in-

teresting., it is the **DECLARATION** (App. H, A-126-127) of James M. Valentine, now retired Chief of Branch 1, Collection Division, New Orleans District, Internal Revenue Service, from Feb. 1983 to Jan. 1987, and again from Oct. 1988 to Nov. 30, 1990. The times are inclusive of both the seizure of May 17, 1985, and the seizure of March 29 & 30, 1990. Mr. Valentine goes on to say, "2. While a Branch Chief, 1 managed seven (7) **subordinate** (emphasis added) Group Managers in six groups over a designated area of the State of Louisiana. -" One would have to wonder if he had jurisdiction over the Lafayette Group Manager (?), and the Baton Rouge Group Manager, fellow defendant and affiant, Henry Frances McKinell. If so, did effective control of the collection effort change when Agent Felger took over for Agent Nepveaux on Feb. 28, 1990. Under 4. (App. H, A-127) Agent Valentine declares"-A Branch Chief is not normally on site for the seizure of assets. However, Dr. Moore's case had some of the characteristics of tax protestor type activity, and I was concerned about the safety of our employees." Would Agent Valentine have the Court believe he was there to protect the two armed CID agents, or the others. Was he also armed because he knew the Plaintiff-Petitioner was a hunter, as Agent Felger asserted. (App. H, A-138,5) Under 5. (App. H, A-127) he further declares, "- *I was shown what looked like account receivable records. These records had been found while our employees were searching for assets to seize. Since Dr. Moore had denied having this type of records under oath, I told Group Manager Henry McKinell that this was a matter for discussion with counsel.*" Did he tell this to McKinell before or after the records had been removed to the CID vehicle the first time? Is it a coincidence that Stevens Moore received a phone call from McKinell at "*approximately 3:30 P.M.*" See Stevens Moore's Declaration (App. H, A-110)). Did Agent Algu know he was carrying women's fur coats to the I. R. S. office in Houma (Algu's Declaration. App. H, A-84,5). Was the carrying of, "*-a file folder that held invoices, appraisals and other information-*", "*-to the I. R. S. office in Houma to copy the*

contents-", and then, *"I returned the file folder to Mr. McKinell at the residence of Dr. Moore,"* be conduct which a reasonable person, "knew or should have known" had a constitutionally violative effect." 102 S. Ct. 2727(1982). McKinell Declares (App. H, A-103, 7.). *At some point during the day, I was shown a file folder that held invoices, jewelry appraisals, and other documents relating to the assets that were being seized or could be seized at the residence. I viewed this file folder as pertinent to the search for property subject to levy as authorized by the* **Writ Of Entry.** *I requested Revenue Officer Aide Dina Bonvillain to make a copy of the contents of the file folder. The Revenue Officer Aide went to the I. R. S. office to copy the documents. The file folder was then returned to Dr. Moore's residence and left there."* (App. H, A-103,7) Should group Mgr. McKinell have known, "The I. R. S. may execute a levy by seizing a taxpayer's property in order to satisfy his indebtedness. However, the I. R. S. cannot intrude into an area of privacy without violating the Fourth Amendment unless it obtains a valid search warrant. A search warrant must be based on probable cause." "One of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." *G. M. Leasing Corp. v. U.S., 429 U. S. 338, 355, 358.* This file was not taken from a desk that needed disassembling, but rather from a built-in file under book selves in Mrs. Moore's study. A close scrutiny of the contents, though unconstitutional, *See U. S. v. Condo & Coolidge, Supra* (see page 25) *would not have shown McKinell other objects to seize, but rather information about objects that should not have been seized.* The file contained appraisals and receipts, etc. in the name of Mrs. Moore, and even in her name as Brennecke, pre-dating 1980, and these objects would not have been the subject of a Lien even if given by the Plaintiff-Petitioner in a year in which he had no Tax liability. (See App. B, A-24 Paragraph 2 , Testimony of Eugene Nepveaux, and App. B, Exhibit #3-Testimony of Brenda Felger)

Plaintiff-Petitioner avers that the affidavits of the Agents raise far more factual questions than they resolve. The Testimony of Agents Felger and Nepveaux noted above (App. B, A-16 through 27, From Exhibit #2 - Testimony of Eugene Nepveaux, and App. B, Exhibit#3-Testimony of Brenda Felger) show conflicts with each other at the time of the depositions, and the information given by the Affiants (A-112 to 115 - Nepveaux, A-137 to 142 - Felger) The Plaintiff-Petitioner severely questions even who may have authored the eventually signed Affdavits by which the Defendants attempt to evade responsibility for their, "-knowing, malicious, deliberate and intentional misconduct - and/or willful and wanton misconduct-and/or wilful and wanton misconduct-and/or grossly negligent misconduct'" (App. A, A-3,4)

Plaintiff-Petitioner avers that he **DID NOT** accept "-*responsibility for having made false material declarations before the district court during contempt proceedings regarding his record keeping*" as stated in the record of the case by Judge Harlington Wood, Jr. (App. J A-153, last statment of Paragraph 1). Plaintiff-Petitioner avers that the Pre-Trial Diversion agreement was entered into so he could give deposition testimony in Civil action No: 90-1918. Counsel for the Plaintiff-Petitioner had appealed the contempt ruling of Judge Collins in Docket No. 89-2451, and The Pre-trial diversion agreement only contained the *alleged accusation* of perjury. Plaintiff-Petitioner filed his **APPELLANT'S BRIEF TO SHOW HIS COMPLIANCE WITH CIVIL SUMMONS AND IN OPPOSITION TO THE RULE OF CONTEMPT** IN THE U.S. CT. OF APPEALS 5th Cir., case No. 90-3426 (App. K, A-157 to 199) in a timely fashion. Ten days before the Governments reply Brief was due, Sept. 11, 1992, the Government filed a **MOTION TO REMAND AND TO SUSPEND BRIEFING SCHEDULE PENDING DISPOSITION OF THE MOTION,**(App. L, A-200-204), claiming, "On September 11, 1992, this office was advised that the I. R. S. has now obtained the sought after information from other sources and, as a result, no longer desires that the summons be enforced.

Accordingly, we request that the court remand this case to the District Court so that the Government may move to vacate the order finding taxpayer in contempt of court." (App. L, A-203, Second Paragraph.) On Sept. 21, 1992, Plaintiff-Petitioner filed, **DEPENDANT -APPELLANT'S MOTION IN OPPOSITION TO PLAINTIFFS-APPELLEES' MOTION TO REMAND AND TO SUSPEND BRIEFING SCHEDULE PENDING DISPOSITION OF THE MOTION** (App. L,), asking for, "Full disclosure should be made to this honorable court as to how, and through whom, counsel's claim of "infused Knowledge" , came so miraculously on September 11, 1992."

REASONS FOR GRANTING THE WRIT

The decision of the United States Court of Appeals for the Fifth Circuit **REVERSING** the **ORDER** of the District Court **DENYING** Summary Judgment to the Defendants should be vacated, and The District Court original **ORDER DENYING**, Summary Judgment to the Defendants should pevail.

The opinion of The United States Court of Appeals for the Fifth Circuit as Documented in their April 29, 1992 was in error in the statement of the facts. Counsel for the Defendants misled the Court in stating that the Plaintiff-Petitoner had accepted responsibility for having made false material declarations before the district court during contempt proceedings regarding his record keeping. (A-153, First Paragraph, last sentence)

Counsel knew or should have known that this was not factual. It is of note that two of the Attorneys for the Tax Division, Department of Justice' who worked on the **MOTION TO REMAND AND TO SUSPEND BRIEFING SCHEDULE PENDING DISPOSITION OF THE MOTION.** (App. L, A-200-204). Namely, Gary R. Allen and Kevin M. Brown, also worked on the **BRIEF FOR THE APPELLANTS,** and **REPLY BRIEF FOR THE AP-**

PELLANTS, (5th Circ. No. 93-2371). Gary R. Allen was the signer of all three documents. Plaintiff-Petitioner these attorneys "knew or should have known they were misconstruing avers the facts before the court. States further, by painting the Petitioner's character in broad strokes, the Court assumes the worst, and the injury petitioner asserts in his complaint is not the reason for it being before the Court, infers, but rather, "he brought it on himself." (See App. I, A-145) Opinion by: Harlington Wood, Jr., Circuit Judge. "This suit against several I. R. S. Agents stems from years of the recalcitrant conduct of a tax protestor." Petitioner asks that this Court consider the instant case on it's merits, and not on the distortions of the Defendants', or the Defendants' Counsel. (See App. B, A-26 Last Paragraph) The Wood Court - "Under this tests the defense of Qualified Immunity would be defeated if on official 'knew or reasonably should have known that the action he took within the sphere of official responsibility would violate the constitutional right of the (Plaintiff), *or if he took the action with malicious intention to cause a deprivation of Constitutional rights or other injury.....*' " *Id.* 420 U.S. at 322, 95 S.Ct. at 1000-1001.751 F.2d 1472 (1985).

The Court of Appeals for the Fifth Circuit relied on Affidavits of the Defendants while ignoring the Declaration of the Plaintiff-Petitioner, thereby depriving the Plaintiff-Petitioner of the protection afforded him by the Fourth Amendment to the Constitution of the United States, and creating an untenable double standard.

"The very essence of civil liberty certainly consists in the right of every citizen to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163, 2 L.Ed. 60 (1803).

The prohibition against unreasonable searches and seizures is directed at govermental action. Absent the exclusionary rule, the Government would be free to undertake unreasonable searches and seizurs in all civil cases

without the possibility of unfavorable consequences." Pizzarello at 408 F.2d 586.

102 S. Ct. 2727 (1982) Justice Brennan: " I agree with the substantive standard announced by the Court today, imposing liability when a public official defendant 'knew or should have known' of the constitutionally violative effect of his actions. Ante, at 2737, 2739. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions,.." "...Thus the clever and unusually informed violator of constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies 'across the board' to all government officials performing discretionary functions.' I write separately only to note that given this standard, *it seems inescapable to me that some measure of discovery may be required to determine exactly what a public-official defendant did "know" at the time of his actions.*" 102 S. Ct. at 2739-2740.

In *United States v. Condo,* 782 F.2d 1502, 1505 (9th Circ. 1986) "The court held that an I. R. S. application for a Writ of Entry must be sufficiently specific in order to enable the Judge to make an independent determination of the existence of probable cause and to prevent agents from having uncontrolled discretion and, to rummage everywhere in search of seizabale items once legally in the premises."

"The Fourth Amendment prohibits search warrants that permit 'a general, exploratory rummaging in a person's belongings.' " *Coolidge,* supra 403 U. S. at 467. "The items to be seized must be described with sufficient particularity so that the executing officer is left with no discretion to decide what should be seized."

In the instant case the Court of Appeals for the Fifth Circuit erred in their review of the legal background for II. THE SEARCH, (A-149-150) (1) in allowing "a general, ex-

ploratory rummaging"—and, (2) "The items to be seized-',were not."—described with sufficient particularity—" See above two paragraphs.

Plaintiff-Petitioner avers that in the case at hand, the Agents Napveaux, McKinell, and others declared in their Affidavits, that they 'rummaged' indiscriminately. Agent McKinell's wild accusations of Mrs. Moore's conduct give credence to his calumnious intent, while he admits to sending files off to be copied without a search warrant. District I. R. S. Counsel, Stevens Moore, present to advise on the avoidance of legal problems, admits to hand leading Agent Felger through the intricacies of the paper work to get the **Writ of Entry** after he had his wish to name Mrs. Moore nominee on Feb. 12, 1990, "adopted by my office". (A-109,3. App. H) Was he present when Aide Bonvillain was copying the records sent to the I. R. S. office by Agent McKinell? *He was present* in Court on Feb. 21, 1990, and again on Mar. 7, 1990. Did he not hear the Plaintiff-Petitioner testify, that he had formed a corporation and would keep meticulous records, and the I. R. S. could dun his earnings. In the meeting of March 28, 1990 planning the seizure, did no one discuss that the Plaintiff-Petitioner had reiterated this intent to Agents Felger And Steve Fanguy in The Summons meeting of March 19, 1990. Did Agent McKinell not recall speaking to Charley Schrader the week following the March 19, 1990 meeting. Mr. Schrader had gone to the Houma I. R. S. office to further his invitation to Agent Felger that she critique the new record keeping of the newly formed medical corporation, and Mr. Schrader recalls speaking to Agent McKinell about what the Plaintiff-Petitioner would be allowed as living expenses. "Agent Cyrus Fanguy declares (App. 8,9, & 10.), in 8.," his frustration with Dr. Moore.", in 9., his work inventorying items in the kitchen "(that Mrs. Moore was undoubtably holding for Dr. Moore as his Nominee,-Comment added), and in 10., his discovery of the computer." Actually, this should not have been great a shock, as the computer was present when he participated in the Seizure of May 17, 1985.

The District Court properly found that there are, "material factual disputes regarding: (1) whether it was immediately apparent that the records were evidence of a crime; and (2) whether the defendants had a right of access to the records."

Plaintiff-Petitioner asks the Court to closely review the contrary of FACTS as considered by the District Court (App. C and G) opposed to the FACTS as listed in the 5th Circuit's Opinion (App. J)

"An appellate court, when reviewing the denial of a motion for summary judgment based on qualified immunity, is to accept the facts in the light most favorable to the non-moving party.' *Salas v. Carpenter,* 980 F.2d 299 (5th Cir. 1992; *Doe v. Taylor ind. School District,* 975 F.2d 137, 139, n.2 (5th Cir. 1992)

Rule 56 of the Federal Rule of Civil Procedure provides that disputed questions of fact ordinarily may not be decided on motions for summary judgment. Rule 56— "In determining whether summary judgment is proper, a court must ordinarily look at the record in the light most favorable to the party opposing the motion, drawing all inferences most favorable that party."

"And an official's good faith has been considered to be a question of fact that some courts have regarded as inherently requiring resolution by a jury," E. g., Landrum v. Moats, 576 F.2d 1320 1329 (CAB 1978); Duchesne v. Sugarmann, 566 F.2d 817, 832-833 (CA2 1977); cf. Hutchinson v. Proxmire, 443 U.S., at 120 n.9, 99 S. Ct., 2680, n.9

"In contrast with the thought processes accompanying "ministerial' tasks, the judgments surrounding discretionary action almost inevitably are influenced by the decisionmaker's experience, values, and emotions, These variables explain in part why questions of subjective intent so rarely can be decided by summary judgment." Harlow v. Fitzgerald 102 S. Ct. 2727 (1982).

The Court of Appeals for the Fifth Circuit did not consider the, **History of Injury**, the **Damages: Personal and Proprietary**, the Extensive **Exhibit List**, and the Comprehensive **Witness List**, all contained in the **MEMORANDUM TO SUBSTANTIATE INJURY AND DAMAGES** (App. B, A-6-40) attached to his **COMPLAINT FOR DAMAGES WITH REQUEST FOR JURY TRIAL.** (App. A, A-15).

The Court commented that Plaintiff-Petitioner should have obtained a Declaration from Charley Schrader. (App. J, A-154 FN 7) The court could hardly expect the Plaintiff-Petitiioner to obtain Declarations from his entire **Witness List**, (App. B, A-34-40) and the Plaintiff-Petitoner had every expectation that deposition and or Trial testimony would bear out the veracity of his **COMPLAINT.**

Petitioner asks This Court to closely review his Oral Argument (App. E, A-61-63) in it's consideration of this case.

CONCLUSION

This court should not allow the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT TO **REVERSE** the ruling of the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA **DENYING** the **Defendants Second Motion for Summary Judgment.**

Respectfully submitted;

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